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SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 78th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 September 1993, at 3 p.m.

Chairperson: Mrs. BADRAN

CONTENTS

Statement by the representative of the Hague Conference on Private International Law

* The summary records of the first part (public) and of the second part (closed) of the meeting appear as documents CRC/C/SR.78 and CRC/C/SR.78/Add.1, respectively.

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The second part of the public meeting was called to order at 5.10 p.m.

STATEMENT BY THE REPRESENTATIVE OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

1. At the invitation of the Chairperson, Mr. van Loon (Hague Conference on Private International Law) took a place at the Committee table.

2. Mr. VAN LOON (Hague Conference on Private International Law) said that the Hague Conference had marked its centenary year in 1993 with the completion of negotiations on the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which had been signed on 29 May at the Peace Palace in The Hague, having been unanimously adopted by the seventeenth session of the Conference. The Conference had also decided to include in the agenda for its next session, to be held in the autumn of 1996, the revision of the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, which was in force in about 10 European countries. Since the latter Convention dealt with questions such as the identity of the child, parental responsibility and the role of children in procedures relating to custody, the Conference realized that the revision process would have to be conducted in the light of the Convention on the Rights of the Child and it would therefore be pleased if the Committee felt it opportune to associate itself with that endeavour.

3. It would be clear from those recent activities that the focus of the Hague Conference was now very much on children and there was a strong sense that the Conference was developing into a worldwide centre in the service of international judicial and administrative cooperation in the field of private law, and particularly in the area of child protection. In addition to the instruments on child adoption and child protection, the Conference had produced four conventions on maintenance obligations, one dating from 1956 and a second from 1958, with two newer conventions signed in 1973. In the light of article 27 (4) of the Convention on the Rights of the Child, which encouraged accession to international agreements on matters relating to maintenance obligations, he wished to suggest that the Committee include a specific mention of the Hague Conference instruments in its questionnaires for reporting by States parties, bearing in mind that non-ratification of those conventions was often simply a result of States not being aware of their existence.

4. One other general point worth noting was that the Conference had developed a rather original system for monitoring its conventions, several of which envisaged a central authority with responsibility for supervising their smooth operation. Over the years it had become established practice to hold meetings of representatives of those central authorities to promote interaction between them and help to find solutions to practical problems that arose under the conventions. Such meetings even provided the machinery for conflict resolution without recourse to any third party or authority. The same system had been adopted for the Convention on intercountry adoption.

5. That new Convention was bound to be of considerable interest to the Committee, since articles 20 and 21 of the Convention on the Rights of the Child dealt specifically with child adoption. In particular, article 21 (e)

urged States parties to conclude bilateral or multilateral arrangements to implement the Convention's objectives in that area. That was precisely what had been achieved in The Hague in May 1993, after a total of nine weeks of intensive negotiations in which 66 of the 146 States parties to the United Nations Convention had participated. In that connection, moreover, it was especially heartening to note that two thirds of those 66 countries were predominantly countries of origin.

6. The object of the Convention, as set out in article 1, was to provide a coherent set of safeguards and mechanisms for international cooperation in intercountry adoption. The best interests of the child were an important common factor in both the Hague Convention and the United Nations Convention, with the former emphasizing in article 4, subparagraph (b) in particular the need to consider possibilities for placement within the State of origin before proceeding to intercountry adoption. The reference in the preamble of the Convention to the United Nations Convention on the Rights of the Child further strengthened the connection between the two instruments.

7. Chapter IV of the Convention, which dealt with procedural requirements, attributed an important role to the central authority of each country, with articles 16 and 17 ensuring coordination between the State of origin and the receiving State, and article 17, subparagraph (c) serving the crucial purpose of avoiding situations whereby a child might encounter administrative obstacles to entry into the receiving State. Chapter III also dealt with the conditions under which accredited bodies - private organizations - might act. In addition, the role of other bodies and individuals was strictly outlined in Chapter IV, article 22.

8. Generally speaking, the emphasis of the Convention was on prevention in order to ensure an orderly, tightly regulated procedure for intercountry adoption when it was in conformity with the rights of the child, an approach which had received the support of INTERPOL. It was hoped that the Convention would end the practice whereby, following the completion of adoption procedures in the country of origin, certain receiving countries insisted on a second adoption procedure upon the child's arrival, conditional upon the fulfilment of a probationary period for the prospective adoptive parents.

9. Other provisions of particular interest were article 29 which established that there should be no contact between the child's parents and prospective adoptive parents until the child 's adoptability had been established, articles 30 and 31 which ensured respect for privacy and access to personal information and article 32 which, in conjunction with article 21, made provision to ensure that no improper financial gain should be derived from intercountry adoption.

10. While the Convention represented a considerable step forward, some important questions remained outstanding, including that of nationality which had been considered as too complex to be dealt with at the time, and that of the application of the Convention to refugees, a matter which would be considered by a working party and a special commission in the course of 1994.

11. All in all, the Convention would be of significance each year for some 20,000 children who were the subject of intercountry adoption, mainly

from the developing to the industrialized countries. Its importance extended beyond intercountry adoption and had implications for the subsidiary principle by opening up new opportunities for North-South cooperation in the sense that in order to ensure the establishment and efficient functioning of central authorities, in particular in developing countries, there would be a need for effective cooperation and assistance on the part of the industrialized countries.

12. Mr. KOLOSOV congratulated Mr. van Loon on his presentation and asked whether the Convention on intercountry adoption had already entered into force.

13. Mr. VAN LOON (Hague Conference on Private International Law) said that as few countries had a system of procedures in existence compatible with that required by the Convention, significant legislative and administrative adaptation would be required at national level; that process would no doubt take some time. Ratification and the consequent entry into force of the Convention was therefore not expected immediately, although a number of States, including countries of origin (Brazil, Colombia, Costa Rica, Mexico, Romania and Uruguay) had already signed the instrument.

14. Mrs. SANTOS PAIS noted with satisfaction the significance given in the Convention on intercountry adoption to the United Nations Convention on the Rights of the Child and in particular to article 21. The establishment of international cooperation in such a difficult field as adoption as well as the reflection, both in the preamble and the text of the Convention on intercountry adoption, of the principle of subsidiarity was of particular importance. The weight given to the best interests of the child, respect for the child's views, and non-discrimination of a child adopted from outside a country was also very significant. A very positive element of the Convention was the opportunity given to central authorities to follow up the situation of the adopted child beyond the completion of adoption procedures. It was also important that information on the origin of the adopted child should be available, particularly in the context of implementation of article 7 of the United Nations Convention. She requested further information concerning the number of ratifications required for entry into force of the Convention on intercountry adoption. Finally, she expressed the hope that when evaluation meetings took place to look at the work of the central authorities in implementing that Convention, the Committee might be kept up to date with discussions.

15. Mr. VAN LOON (Hague Conference on Private International Law) said that instruments of the Hague Conference required three ratifications as a general rule. In the case of the Convention under discussion it had moreover been considered that an early entry into force was desirable in that its implementation in the ratifying countries might provide a model for other countries whose adoption procedure systems were not as developed. The Conference would certainly be pleased to invite the Committee to send an observer to any relevant evaluation meetings to be held in the future.

16. Mrs. BELEMBAOGO noted that reservations had been made by some States in the course of the drafting of the Convention on intercountry adoption, particularly in the case of Islamic States in which alternatives to adoption

were contemplated to ensure the protection of children. The problem of nationality evidently remained outstanding, as did the need to resolve certain administrative obstacles in the way of the smooth transfer of adopted children from the State of origin to the receiving State. In that respect it seemed that measures which were being undertaken or envisaged in some countries and which were related to current reactions to immigration and to problems of racism and xenophobia, might also tend indirectly to hamper intercountry adoption. Another aspect to be considered was that countries of origin, which were faced with increasing economic and other problems, might also tend to place greater priority on encouraging adoption within the country of origin in order to benefit from the economic and social potential which children offered, while retaining intercountry adoption as a last resort. The need for adopted children to be aware of their roots was also a factor to be taken into consideration.

17. Mr. MOMBESHORA noted that few African and Asian countries had attended the meetings leading up to the Convention on intercountry adoption and asked whether, for the former in particular, it had been for cultural reasons, the prevalence of the extended family system perhaps reducing the need for intercountry adoption. Why had refugee children not been considered in the context of intercountry adoption?

18. Mrs. EUFEMIO requested clarifications concerning naturalization of an adopted child in the receiving country. Her experience was that it could take up to two years for naturalization proceedings to be completed in some countries.

19. Mr. VAN LOON (Hague Conference on Private International Law) said that while it had not been possible to resolve the question of nationality at the current time, over the years of negotiation, a process of convergence seemed to have taken place and there was cause for optimism in that respect. The reason that few African countries had been involved in the negotiations was that, initially, the countries where there was a significant practice of adoption had been invited to participate and few African countries fell into that category. However, during the course of negotiations, some African countries had expressed the wish to participate, as cases of adoption were increasing against a background of growing urbanization and consequent decline in the importance of the extended family. Other countries which might have an interest in acceding to the Hague Convention at a later stage would of course have the opportunity to do so. The question of refugees was a complex one and it was intended to discuss it in the future. Concerning naturalization, the consequence of the Convention would inevitably be that an adoption order issued in a country of origin must automatically be recognized in the receiving country, so that the matter should therefore be resolved in the future.

20. The CHAIRPERSON thanked the representative of the Hague Conference on Private International Law for attending the meeting of the Committee and for his excellent presentation and answers to questions put by members of the Committee.

The meeting rose at 6.10 p.m.